

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HERIBERTO RODRIQUEZ,)	
)	
Plaintiff,)	Civil Action No. 12-924
)	
v.)	Magistrate Judge Cynthia Reed Eddy
)	
UNIT MANAGER SELELLO;)	
<i>ET AL.</i> ,)	
Defendants.)	

MEMORANDUM AND ORDER

Plaintiff filed the underlying civil rights complaint in this Court on July 5, 2012. On October 29, 2012, Defendants filed a Motion to Dismiss (ECF No. 26) along with a Brief in support thereof (ECF No. 27) claiming that the complaint should be dismissed against it for failure to state a claim upon which relief may be granted.

On October 31, 2012, this Court ordered Plaintiff either to file an amended complaint or a response to the pending motion by November 30, 2012. In that Order, this Court specifically directed Plaintiff that his amended complaint **must include all defendants and all causes of action and must set forth clearly-identified causes of action that both identify Plaintiff's legal theories and facts suggestive of the proscribed conduct alleged in one stand-alone document without reference to any other document filed in this matter.** *See* Fed. R. Civ. P. 8.

On November 20, 2012, this Court received a packet of papers from Plaintiff containing a rambling narrative and original documents and other papers, which Plaintiff labels as his amended complaint. These papers are being returned to Plaintiff as these documents are

incomprehensible and this Court will not sift through these papers to determine Plaintiff's claims.

AND NOW, this 20th day of November, 2012;

If Plaintiff desires to file an amended complaint, he is ORDERED to do so on the approved form, which is enclosed, no later than December 21, 2012. THE COURT WILL NOT ACCEPT FOR FILING ANY AMENDED COMPLAINT THAT IS NOT SET FORTH ON THE APPROVED FORM. Plaintiff shall organize his amended complaint by causes of action. Under each cause of action, he shall state the following (1) the names of the persons who personally participated in causing the alleged deprivation of his constitutional rights; (2) facts showing the person is a state actor or facts showing that non-state actors conspired with state actors to violate Plaintiff's civil rights; (3) the dates on which the conduct of each defendant allegedly took place, (4) the specific conduct or action Plaintiff alleges is unconstitutional, (5) the particular constitutional provision under which Plaintiff makes the claim, and (6) the particular type of relief he is seeking from each Defendant.

IT IS FURTHER ORDERED that if Plaintiff does not desire to file an amended complaint, he shall file a response in opposition to Defendant's Motion to Dismiss, including any appropriate exhibits or attachments, no later than December 21, 2012. The filing of a response instead of an amended complaint will serve as notice to the District Court that Plaintiff is asserting his intent to stand on the original Complaint filed in this action. See Smith v. Gensamer, Civil No. 07-1802, 2008 WL 318388, 2 (M.D. Pa. Feb. 4, 2008) ("Plaintiff is further cautioned that his failure to file an amended complaint within the specified time period will result in the matter proceeding on the original complaint.").

IT IS FURTHER ORDERED that should Plaintiff fail to comply with this order, the Motion to Dismiss may be decided without the benefit of Plaintiff's response and the Court will consider dismissal of this action for failure to prosecute. *See Gilyard v. Dauphin County Work Release*, Civil No. 10-1657, 2010 WL 4623996, 2 (M.D. Pa. Nov. 10, 2010) (holding that failure to file an amended complaint within the specified time period would be construed as a loss of interest in the litigation and would result in dismissal of the action).

IT IS FURTHER ORDERED that, in the event that Plaintiff elects to file a response to the pending motion, Defendants shall file a reply brief on or before January 28, 2013. Should Defendants file a reply brief, Plaintiff will have thirty days in which to file a response brief if he so desires. **NO EXTENSIONS WILL BE GRANTED WITHOUT GOOD CAUSE.**

/s/Cynthia Reed Eddy
Cynthia Reed Eddy
United States Magistrate Judge

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